

SECOND ADDENDUM TO THE INITIAL STATEMENT OF REASONS

a) Updates to the Initial Statement of Reasons

Section 45-101(p)(1)

Specific Purpose:

This section is adopted to include a definition of participation requirement.

Factual Basis:

This section is necessary to clarify that any of the five education and employment conditions, as defined in Welfare and Institutions Code (WIC) section 11403(b), may be referred to as participation requirements. When Extended Foster Care (EFC) was initially implemented, the California Department of Social Services (CDSS) met with a large workgroup of advocates, former foster youth, and county and state staff. The workgroup and subsequent implementing All County Letters (ACL) commonly referred to any or all of the five education and employment conditions as participation criteria, as a Nonminor Dependent (NMD) must participate in one of the five to continue to be eligible for EFC. Adding this definition will ensure that the counties understand the meaning of participation criteria and that the phrase is used consistently across the state.

Sections 45-310.181, .181(a) through (c)

Following the public hearing, and at its discretion, the California Department of Social Services (CDSS) has amended Section 45-310.181(a) to include examples of types of credentials a NMD might pursue as a form of secondary education. These amendments clarify that a variety of credentials, such as a diploma, a degree, or a certificate, will meet this participation criteria.

These sections are necessary to comply with WIC section 11403(b)(1), which states that a nonminor who is participating in a secondary education program is eligible for EFC benefits. When EFC was initially implemented via ACL, CDSS met with a large workgroup of advocates, former foster youth, and county and state staff to develop appropriate policies. This workgroup developed the categories and criteria for these participation requirements. Accordingly, these sections are added to specify this condition.

Sections 45-310.182, .182(a) through (c)

Following the public hearing, and at its discretion, the California Department of Social Services (CDSS) has amended Section 45-310.182(b) by striking the phrase “without being enrolled in the institution” and made a change to clarify that courses

taken at an institution located *and* licensed or otherwise authorized to operate in another state county towards this participation requirement. These amendments clarify when courses taken at an institution, both in and out of the state of California, will count towards this participation requirement.

Additionally, this section is necessary to clarify for eligibility workers, social workers, NMDs, and other interested stakeholders the conditions under which participation in post-secondary or vocational education meets the education and employment requirements for the continued eligibility of EFC benefits. These regulations are necessary for statewide administration of the extended foster care program to ensure that youth who are enrolled at least half time in programs described in the regulation are not improperly excluded from extended foster care. Finally, clarifying that enrollment is deemed continuous during summer or other scheduled breaks during the school program is necessary to ensure that youth who participate in post-secondary or vocational education do not experience a break or disruption in foster care payments during these periods.

Section 45-310.185(a)(1)

Specific Purpose:

This section is necessary to clarify that a nonminor is not required to take remedial measures to treat a medical condition which renders a nonminor incapable of performing any of the other participation criteria in order to remain eligible for EFC funding.

Factual Basis:

When EFC was initially implemented, CDSS met with a large workgroup of advocates, former foster youth, and county and state staff to develop appropriate policies. The workgroup determined that it was necessary to clarify that youth with medical conditions that render them incapable of participating in school, work, or programs or activities to remove barriers to employment should not be forced to engage in measures to treat the medical condition as a condition of continued EFC participation and eligibility. This policy is consistent with the purpose of EFC up to age 21, namely providing a safety net for those youth in foster care at age 18 who continue to need and desire the placement and case planning services. Adding this regulation will ensure that youth who have a medical condition which renders them incapable of performing any of the other participation criteria are not forced to take remedial measures just for the purpose of remaining eligible for foster care funding.

Sections 45-310.19, .191 through .192

CDSS has amended the language in previous versions as relating to a youth who is incapable of making an informed decision. There was concern that the prior version might have been interpreted to limit the youth who could enter EFC, which was not the intent of the language.

Rather, in order to ensure that the eligibility worker has proper documentation when a youth has been determined incapable of making an informed decision, yet remains in EFC, the regulations have been amended to direct the eligibility worker to maintain such documentation in the file. This will ensure that, for eligibility purposes, the file contains complete information.

WIC section 303(d)(1) states in part, "The nonminor shall enter into a mutual agreement for placement, as described in subdivision (u) of Section 11400, unless the nonminor dependent is incapable of making an informed agreement..." This section of the WIC creates an exception to the rule that an NMD must sign a mutual agreement where they are incapable. A future regulations package will explain this in further detail; this is all that is required of an eligibility worker which these regulations govern. The exception in Section 303 only applies to the mutual agreement and the SOC 163, the Re-entry Agreement, does not have a similar statutory exemption.

In addition, following the public hearing, and at its discretion, the CDSS has removed "wishes to" prior to "remain" for clarity. This amendment clarifies that these provisions will apply to youth who remain in foster care.

Sections 45-310.22, .221, .221(a) and (b)

Following the public hearing, and at its discretion, CDSS has corrected the quote from WIC Section 11403(e) that is referenced in the Factual Basis.

In addition, in the Factual Basis, the phrase "Extended Foster Care" is removed from the direct quote for consistency purposes concerning Aid to Families with Dependent Children-Foster Care (AFDC-FC). The quote shall say, "AFDC-FC benefits to nonminor dependents, may be resumed at the request of the nonminor by completing a voluntary re-entry agreement pursuant to subdivision (z) of 11400."

In addition, following the public hearing, and at its discretion, the CDSS has amended Section 45-310.221(a) to clarify that date the SOC 163 is signed by the nonminor dependent is the relevant date when calculating the beginning date of aid. This clarification ensures that a youth who reenters foster care through the signing of the SOC 163 may begin to receive aid as soon as they sign the form and are placed into an eligible facility. Further, 45-310.221(b) is amended to clarify the eligible placements for nonminor dependents in foster care. This provision ensures that both county worker and youth understand the types of funded foster care placements.

Sections 45-310.23, .231, .231(a) and (b)

Additional Factual Basis:

These sections are necessary to comply with WIC section 11403(e) which states, "Eligibility for aid under this section shall not terminate until the nonminor dependent attains the age criteria, as set forth in subdivision (a), but aid may be suspended when the nonminor dependent no longer resides in an eligible facility, as described in Section 11402, or is otherwise not eligible for AFDC-FC (Aid to Families with Dependent Children Foster Care) benefits under Section 11401, or terminated at the request of the nonminor, or after a court terminates dependency jurisdiction pursuant to Section 391, delinquency jurisdiction pursuant to Section 607.2, or transition jurisdiction pursuant to Section 452." While WIC 11403(3) is permissive as to whether a suspension should occur, federal requirements are much more stringent as to when payments are allowed. 45 USC 672(b) states,

"Foster care maintenance payments may be made under this part only on behalf of a child described in subsection (a) of this section who is—

(1) in the foster family home of an individual, whether the payments therefor are made to such individual or to a public or private child-placement or child-care agency, or

(2) in a child-care institution, whether the payments therefor are made to such institution or to a public or private child-placement or child-care agency, which payments shall be limited so as to include in such payments only those items which are included in the term "foster care maintenance payments" (as defined in section 675(4) of this title)."

42 USC 672(c) defines foster family home and child care institution. Therefore, Section .231(a) is added to conform with federal requirements.

Additionally, federal Title IV-E policy requires the state to "ensure that a youth receiving a title IV-E foster care maintenance payment under section 475(8)(B) of the Act meets the education and employment criteria or is incapable of meeting any of these criteria due to a medical condition, as elected by the title IV-E agency. Once a title IV-E agency determines that a youth no longer meets the criteria, the agency must discontinue the title IV-E foster care maintenance payment for the youth" (Child Welfare Policy Manual, Section 8.3B question number 8). Additionally, a youth is not eligible for foster care funding if he or she is no longer residing in an eligible facility as defined in MPP sections 45-202.5 and 45-203.4. Therefore, the regulation is necessary to ensure statewide uniformity and to ensure payments are appropriately made.

Section 45-310.252

Following the public hearing, and at its discretion, the (CDSS) has amended this section to clarify that a late SOC 161 is not grounds to terminate EFC payments and to clarify that reviewing the SOC 161 is a mandatory function for an eligibility worker. The sole grounds for termination or suspension are delineated in Sections 45-310.23 and .24. This amendment is necessary to ensure that nonminor dependents continue to receive funding for placements when administrative or clerical issues have delayed the receipt or review of the SOC 161.

Sections 45-310.261

A period is added before "261" to correct a grammatical issue. This change is nonsubstantive.

Sections 45-310.27 and .271

Following the public hearing, and at its discretion, the CDSS has removed these proposed sections as they unnecessary. This change is nonsubstantive.

Handbook Section 45-310.311

This section was modified quote portions of Welfare and Institutions Code section 11401.1 rather than paraphrasing the section.

Section 45-310.317

Specific Purpose:

Following the public hearing, the CDSS determined that this section is necessary to clarify that a nonminor serving in the reserves of a branch of the military is eligible to continue receiving EFC benefits. Therefore, this section is removed from "Handbook" and is included as regulatory text.

Factual Basis:

This section is necessary to instruct the eligibility worker how to treat cases of NMDs in the military reserves when the NMD is not on active duty. People serving in the military reserves do not live on base or in base housing; they merely report for short times to a military facility. Additionally, an individual in the military reserves may be attending school, working, or otherwise reducing barriers to working. Therefore, the NMD may meet a variety of the participation requirements to remain in EFC and the county child welfare agency or probation department could approve their housing as well as conduct face-to-face monthly social worker visits. This clarification will ensure that eligible youth continue to participate in EFC.

Handbook Section 45-312.41(a)

Following the public hearing, and at its discretion, the CDSS has removed this Handbook Section.

Sections 45-312.52, .521, .521(a) and (b), .521(b)(1) through (3), .522, .522(a), and .523

Following the public hearing, CDSS is making a change to this section for clarity purposes.

Language was inadvertently left out of 45-312.523 which clarifies how the nonminor can become his or her own payee. This section was modified to add that language. This modification is necessary to ensure that counties, nonminors, and guardians understand when a young person can be their own payee and that the same standards are applied on a statewide basis.

The FC 2 is a form defined in 45-102(f)(1) and is used to collect information necessary to determine foster care eligibility at the time of application and redetermination.